IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

F.A.O. Nos. 187, 188, 189 & 193 of 2003

Judgment reserved on : 28.9.2007

Date of decision: 5.10.2007

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1. FAO No. 187 of 2003

National Insurance Company Ltd. ..Appellant

Versus

Naresh Kumar and others ..Respondents

Mr. Ashwani Kumar Sharma, counsel for the appellant

Mr. Ramakant Sharma, counsel for respondent No. 1

Mr. Dinesh Bhanot, counsel for LRs of respondents No. 2&3

2. FAO No. 188 of 2003

National Insurance Company Ltd. ..Appellant

Versus

Smt. Amrit Kaur and others ..Respondents

Mr. Ashwani Kumar Sharma, counsel for the appellant

Mr. Ramakant Sharma, counsel for respondents No. 1 to 4

Mr. Dinesh Bhanot, counsel for LRs of respondent No. 5 and for respondent No.6

3. FAO No. 189 of 2003

National Insurance Company Ltd. ..Appellant

Versus

Avtar Singh and others ..Respondents

Mr. Ashwani Kumar Sharma, counsel for the appellant

Mr. Ramakant Sharma, counsel for respondents No. 1 & 2

Mr. Dinesh Bhanot, counsel for LRs of respondent No. 3 and for respondent No.4

4. FAO No. 193 of 2003

National Insurance Company Ltd. ..Appellant

Versus

Rashid Mohammad and others ..Respondents

Mr. Ashwani Kumar Sharma, counsel for the appellant

Mr. Ramakant Sharma, counsel for respondent No. 1

Mr. Dinesh Bhanot, counsel for LRs of respondent No. 2 and for respondent No.3

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The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

Deepak Gupta, J.

By this judgment the aforesaid four appeals are being disposed of since they arise out of the same accident and involve common questions of law.

On 17.2.2001 at about 11.00 p.m. an accident took place between jeep No. HP-12-1711 and truck No. HIS 9211. A number of claim petitions were filed and the learned Tribunal held that the accident took place due to the rash and negligent driving of Jagtu, driver of the truck

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

which was owned by Bahadur Singh. Compensation was awarded and the Insurance company was held liable to pay compensation.

The dispute raised by the Insurance Company is that on the date of accident the truck was not insured with it. The admitted facts are that a cover note was issued by the appellant-Insurance Company in favour of Bahadur Singh, owner of the truck No. HIS 9211 whereby truck was insured w.e.f. 21.4.2000 to 20.4.2001. The payment of premium was made by Bahadur Singh, owner of the truck, vide cheque No. 989130, dated 19.4.2000, Ex.PW-3/A. Consequent to the issuance of the cover note, the Insurance Company also issued a policy of insurance, Ex.RW-3/B. This cover note was issued on the consideration of the cheque. The cheque was sent for encashment by the Insurance Company and was dishonoured vide letter Ex.RW-3/C, dated 9th May, 2000. Immediately thereafter on 9.5.200 the Insurance Company sent a notice Ex.RW-3/D to Bahadur Singh, owner of the truck that the cheque has been dishonoured and, therefore, the policy stands cancelled and the Insurance company is not at risk. The letter was sent by registered AD post and the Insurance Company has

proved on record extract of the dispatch register (RW-3/E) which shows that registered AD letter was sent to Bahadur Singh on 24.5.2000 and on the same date copy of the said letter was sent by ordinary post to the Registration & Licensing Authority, Nalagarh. The stand of the owner of the truck is that the letter was never received by him and he was not aware that the stood cancelled.

Learned counsel for the parties have referred to various judgments.

In **United India Insurance Co. Ltd. vs. Ayeb Mohammed and others**, **1991 ACJ 650** a two Judge Bench of the Apex Court held that once the cheque was dishonoured and in absence of payment the cover note became ineffective. It was further held that since the fact that cheque had bounced was a matter within the knowledge of the insured, no special notice would be required to be issued to the insured.

This point again came up for consideration before the Apex Court in **Oriental Insurance Co. Ltd. vs. Inderjit Kaur and others,** (1998) 1 SCC 371. In this case the premium for the policy was paid by cheque. The policy was issued on 30.11.1989. A letter was sent by the

Insurance Company to the insured on 23.1.1990 informing him that the cheque had been dishonoured and that the Company was not at risk. The premium was paid in cash on 2.5.1990. In the meantime on 19.4.1990 the accident took place. A three Judge Bench of the Apex Court considered the provisions of Section 64-VB of the Insurance Act as well as Sections 147 and 149 of the Motor Vehicles Act. The Apex Court held that the observations in the case of **United India Insurance Co. Ltd. vs. Ayeb Mohammed and others**,(Supra) did not lay down good law. The Court held as follows:

> "9.We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.
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> 10.The policy of insurance that the appellant issued was a representation upon which the authorities and

> third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.
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> 12.It must also be noted that it was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant."

In **New India Assurance Co. Ltd. vs. Rula and others**, (2000) 3 SCC 195, the apex Court dealt with a similar point. In that case the vehicle was insured on 8.11.1991 and met with an accident on same day at mid night. The cheque was later on dishonoured on 16.11.1991. The facts of this case were different from the earlier case as in this case at the time of accident the Insurance Company had not cancelled the policy of Insurance. The Apex Court after considering the provisions of the Contract Act and the Motor Vehicles Act held as follows:

> "10.The contract of insurance in respect of motor vehicles has, therefore, to be construed in the light of the above provisions. Section 146(1) contains a

prohibition on the use of the motor vehicles without an insurance policy having been taken in accordance with Chapter XI of the Motor Vehicles Act. The manifest object of this provision is to ensure that the third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries.

11.Thus, any contract of insurance under Chapter XI of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. As pointed out by this Court in **New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani,** AIR 1964 SC 1736, the rights of the third party to get indemnified can be exercised only against the insurer of the vehicle. It is thus clear that the third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concern of the third party who is concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third party against the insurer."

The Apex Court followed the judgment in **Inderjit Kaur's** case (Supra) and held thus:

> "13.This decision, which is a three-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the policy on the date on which the accident took place. If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party."

A similar point was raised before the Apex Court in **National Insurance Co. Ltd. vs. Seema Malhotra and others**, (2001) 3 SCC 151. In this case the policy was issued on 21.12.1993 against a cheque issued on the same date. The vehicle met with an accident on 31.12.1993 and the insured also died in the accident. The cheque was dishonoured on 10.1.1994. The widow and children of the insured filed a claim with regard to the loss of the vehicle before the Consumer Protection Commission. The J&K State Consumer

Protection Commission rejected the claim on the ground that since the cheque had bounced there could no legal contract between the parties. The matter was then taken up by the claimants before the High Court of Jammu and Kashmir. The High Court directed that the claim should be assessed and after deducting the amount of premium the balance amount should be paid to the claimants. The Insurance Company aggrieved against the said judgment filed an appeal before the Apex Court. After considering the entire law on the subject the Apex Court held as follows:

> "17.In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in case. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.
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> 18.Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his

part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation.

19.Under Section 25 of the Contract Act an agreement made without consideration is void. Section 65 of the Contract Act says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get the money back."

A Division Bench of the Kerala High Court in **New India Assurance Company Ltd. Vs. Raghu and others 2002 ACJ 217** after considering the judgment in **New India Assurance Co. Ltd. Vs. Rula and others** supra held that once the policy is cancelled, then there is no policy in existence and, therefore, the Insurance company cannot be held liable even in respect of 3rd parties. With due respect to the Division Bench, I am of the opinion that this judgment is not in consonance with the law laid down by the Apex Court in the aforementioned two cases. In Inderjit Kaur's case in para 10 the court held that the Insurance Company cannot be absolved of its obligations to third parties because it did

not receive the premium and its remedy in this behalf lay against the insured. I am of the view that even if the accident occurs after the cancellation of the policy, the Insurance Company cannot escape its liability in view of the law laid down in Inderjit Kaur's case wherein the accident had occurred after the letter of cancellation had been sent by the Insurance Company.

On the other hand, Mr. Bhanot has relied upon a Division Bench judgment of Andhra Pradesh High Court reported in **M. Nageswara Rao Vs. New India Assurance Company Ltd. and others 2004 ACJ 1554** in which the court has held that since the Insurance company failed to prove that the letter canceling the policy had been served upon the insured, it cannot escape its liability. It is contended by Mr. Bhanot that there is no proof in the present case that the letter was actually received by the owner of the truck. I am of the view that once a party sends a letter correctly addressed and duly stamped, a presumption has to be drawn that the letter was delivered to the addressee. This presumption has not been rebutted in the present case. The owner while appearing in the witness box did not even assert in examination-in-chief that he has not

received any such letter. In any event, as far as this court is concerned, it had already been held that it is the sending of the letter which is more important.

A learned Single Judge of this court in **United India Insurance Co. Ltd. Vs. Laiq Ram and others 2006 ACJ 359,** decided on 17.9.2004 held that the Insurance Company was liable since it had not shown that the letter of cancellation was actually posted. This judgment, in my opinion, does not help the owner since in the present case there is sufficient material on record to show that the letter of cancellation was actually posted. In fact this court dealt with a similar matter in **Mittar Singh Vs. Gian Chand and others 2005(2) SLC 267** wherein after discussing the entire law, it was held as follows:-

> "**22.** A reading of the various judgments of the Apex Court makes it abundantly clear that the Insurance Company cannot escape its liability to pay compensation to third parties even if it has cancelled the policy because the third parties who benefit under the terms of the contract cannot be put to risk. The Insurance Companies, once they accept premium in cheque and issue a cover note or a policy of insurance take the risk of paying the amount of compensation, if any, payable to third parties even if the cheque bounces. Third party insurance is compulsory under the Motor Vehicles

Act. The purpose of this is that people who suffer in accidents are able to recover the amount of compensation from the Insurance Companies. Therefore, as has been held by the Apex Court in **Inderjit Kaur's** case (supra) and in **Rula's** case (supra) it is the Insurance Company who was responsible for its predicament. However, both in **Inderjit Kaur's** case (supra) and in **Rula's** case (supra) the Supreme Court has made it abundantly clear that the Insurance Company is not absolved of its obligations to third parties under the policy because it does not receive premium. The remedy of the Insurance Company lies against the insured. It is, thus, obvious that though the Insurance Company may not be able to avoid its liability as far as third parties are concerned it can take steps to recover the amount from the insured. The Apex court in **Seema Malhotra's** case (supra) has clearly held that when the insured fails to pay the premium promised he cannot claim performance from the insurer in such a situation. The cases of third parties stand on a different footing from the cases by the insured. The insured cannot be heard to say that he must be indemnified even if the cheque issued by him for payment of premium has been dishonoured."

It is apparent in the present case that the Insurance Company had sent by registered post letter, Ex.RW-3/D, on 9.5.2000 informing the owner that due to

the dishonour of cheque No. 989130, dated 19.4.2000 the policy stands cancelled and the Insurance Company is not at risk. The accident took place on 17.2.2001, i.e. more than 8 months thereafter. The Insurance Company, therefore, must have the right to recover the amount paid by it to the third parties from the insured. The sympathy of the court may be with the third parties, but there can be no mis-directed sympathy with the owner of the truck whose cheque has bounced.

Keeping in view the aforesaid discussion the appeal of the Insurance company is partly allowed. It is held that the Insurance Company is liable to indemnify the award and pay the amount to the claimants. However, it shall be entitled to recover the amount paid by it from the insured. During the pendency of the appeal the insured has expired and his legal representatives have been brought on record. The liability of the legal representatives is only to the extent of the estate of the insured, Bahadur Singh, which they may have inherited. All the appeals are disposed of in the aforesaid terms with no order as to costs.

October 5, 2007(K) (Deepak Gupta), J.